

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 14, 2016
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, November 14, 2016 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present

Mayor Smith indicated for the record that Commissioners Ellison, Haladay, Noonan and Farris-Olsen were present. City Manager Ron Alles, City Attorney Thomas Jodoin and Deputy City Clerk Robyn Brown were present. Others present were Gary Spaeth representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of October 31, 2016 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. 2017 Utility Bill Inserts
- C. Resolution authorizing the City of Helena to lease the property generally known as "Grandstreet Theatre" to Broadwater Productions, Inc. (10-year term). **Res #20315**
- D. Resolution authorizing the City of Helena to lease the property generally known as the "Neighborhood Center" to Rocky Mountain Development Council (1 year term). **Res #20316**

City Manager Ron Alles recommended approval of the claims and the consent agenda.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Ellison moved approval of items A through D on the consent agenda. Commissioner Haladay seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Haladay referred to an email he had recently sent the Commission regarding passage of the constitutional amendment colloquially known as "Marsy's Law" in the general election. In that correspondence he expressed concern for practical matters associated with the initiative's passage, specifically the administrative burden it will place on the City, increased costs and staff time, in order to conform with the requirements set forth in the law.

He acknowledged such concerns should've been brought forward at inception of the initiative; however, that was dissuaded by a proclamation issued by the City regarding the law. Now that it has passed, not only will the increased costs draw from the General Fund, Helena's residents deserve transparency relative to how the City's compliance will have an effect on how their tax dollars are allocated.

Commissioner Haladay requested discussion of the implementation and the numerous impacts resulting from enactment of Marsy's Law be discussed at an approaching Administrative Meeting so the Commission can be advised of the implications of operating under the law and the fiscal impacts to the City's budget.

Manager Alles agreed such discussion needs to be held, and indicated staff is currently gathering directives for implementation of the law. Until those details become clear, he anticipates operations and compliance can be performed under the existing FY2017 budget; and indicated he will work with staff to make that happen. During the FY2018 budget process, the effects of this law will be a major topic for discussion.

City Attorney Jodoin spoke to continuing discussion being held between varying judicial jurisdictions regarding the potential burdens this law may place on local prosecution offices and mentioned some ideas being discussed in order to remediate those issues. Attorney Jodoin added due to conflicts between the ballot language and existing state statute there is disagreement over the effective date so the City may have longer than anticipated to formulate a scenario plan to comply with the law.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

Attorney Jodoin reported the group of Westside property owners who filed the existing suit against the City challenging the annexation proposed for their properties has added a 7th complaint to their suit, which challenges the annexation of Joslyn Street. He explained the annexation gestures that enabled the City's current proposal to annex Joslyn were approved over 13 years ago. Given there is such a large timespan between that action and the City's existing annexation project, he is unsure how it could be applied to the current project; staff is researching the issue.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC Chair Gary Spaeth reported the Council will be discussing the issue of community decay at its November meeting, and City Attorney Jodoin and Community Development Director Haugen have been invited to attend. Due to the Thanksgiving holiday, the meeting date has been moved to November 30, 2016. Chair Spaeth wished the Commission members and City staff a Happy Thanksgiving.

Regular Items

REGULAR ITEMS:

- A. CONSIDER RELEASE OF AN EXISTING CITY OF HELENA UTILITY EASEMENT LOCATED WITHIN THE SKYWAY REGIONAL SHOPPING CENTER.

Staff Report

City Engineer Ryan Leland reported Eric Isom, Chief Operations Officer for the Skyway Regional Shopping Center, has submitted a request to the City of Helena to release a portion the easement that was created when Home Depot was constructed and went through the subdivision process. The portion of the easement to be released is located in Skyway Regional shopping center within Lot 1-A-1-A COS # 3270343 on the south side of Home Depot and is under the recently

constructed Hobby Lobby. There are currently no utilities in this portion of the easement.

Engineer Leland recommended approval of the proposed unused utility easement to allow Skyway Regional Shopping Center to clean up the plat and eliminate this unused easement.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Noonan moved approval for a release of interest in the existing utility easement generally located within the Skyway Regional Shopping Center in Lot A-1A-1 COS # 3270343.

Commissioner Haladay seconded the motion. All voted aye, motion carried.

B. CONSIDER A VARIANCE REQUEST RELATED TO WATER SERVICE CONNECTIONS IN PHASE I OF GREEN MEADOW SUBDIVISION.

Staff Report

The contractor for the Green Meadow Subdivision is currently installing infrastructure to meet the annexation agreement conditions. On October 13th 2016, City staff discovered the contractor had installed the water taps on their own, which is a violation of Helena City Code 6-2-3, Rule 20 and City Code 6-2-4, as well as City Engineering Standards. The taps and mains were covered and backfilled at the time of discovery in violation of the following two City Codes:

City Code 6-2-3, Rule 20 and 6-2-4:

6-2-3 RULE 20: No person other than an authorized employee of the Utility Maintenance Division shall make any tap or connection with any main or distributing pipe of the city.

6-2-4: TAPPING CHARGE:

Any person desiring to make connection to the water or sewer mains of the city must make application in writing, and pay a fee for the cost of tapping in advance. (Ord. 3177, 6-10-2013, eff. 7-15-2013)

The City Codes were put into place to insure that the City has control of the water taps and no one is connected to the system without the City's knowledge. It's also for the safety and integrity of the system. The water tap is inherently a weak and vulnerable part of the system and many leaks happen at the tap. Staff was informed that the contractor installed the taps under the direction of a certified plumber. The City uses machine taps, exclusively, which are superior to manual taps. The Contractor installed manual taps without notifying the City or applying for a tapping permit in advance. By applying for the tapping permit, not only does the City get to tap the main but also has an opportunity to inspect the tap and a portion of the water main installation. It is standard practice for cities to control the tapping of their water mains in the interest of public health and safety, system integrity and proper billing for water usage.

The project owner, contractor and engineer are asking for variance from City Codes 6-2-3 and 6-2-4 - after the fact. On November 2nd, the contractor paid the water tapping fees of \$3490; however, it is still a code violation. Though the City cannot physically verify the number of taps, both the infrastructure plans and a statement given by the

contractor indicate 20 taps were installed. On November 1st City staff inspected 4 of the 20 taps after they were re-excavated by the contractor, and no construction deficiencies were observed other than methods and materials different from recommended City practice. The quality of the manual taps could not be inspected without disassembly, and as such were not verified. From an engineering perspective, though not desirable, the installation is acceptable. Because of the violation of City Code, a City Commission-approved variance is required.

Engineer Leland noted if the variance were approved; the applicant would not have to be dug up and reinstall the water main; however, City staff does not have control over the system integrity or number of taps installed on the main.

Discussion

Commissioner Ellison asked how much it would cost the applicant to dig up and re-install the problem main. Engineer Leland stated it would be a five-six block section (approximately) and therefore very costly- likely several hundreds of thousands of dollars.

Commissioner Haladay asked if City staff was able to obtain adequate proof of correct installation. Engineer Leland stated City staff was only able to observe 4 of the taps already installed and is being asked to rely on the oversight provided by Stahly Engineering as they observed the construction methods and installation.

Commissioner Haladay asked if the contractor has been hired for City projects in the past and if he knew the reasoning behind the contractor's decision to perform this work in violation of City Code. Engineer Leland stated yes, specifically the Cannon Street Sewer Main Installation. He commented he could not speculate as to why the contractor would want to tap the mains on their own and deferred the question to the applicant.

Commissioner Haladay noted City Code allows for interested persons to apply for variances from certain requirements; most of the variances can be granted by the City Engineer or Public Works Director without needing Commission's approval. He asked if the applicant had applied for a variance to perform this work under the conditions being described. Engineer Leland stated no and explained it was the City who contacted the contractor once it became aware of the violations. At that time, the developer applied for the variance under consideration this evening and being that it is a violation of City Code, it cannot be approved within the Public Works Department; it must be approved by a vote of the Commission.

Public comment

Mayor Smith called for public comment.

Marc Parriman; Project Manager for the Green Meadow Subdivision development; acknowledged responsibility for the mistakes made; as the Project Manager on the development he should've been aware of the regulations and requirements, noting he was of the belief a certified plumber could perform the installation of the taps. He assured the Commission and City staff that everything was installed correctly; referring to the process of tapping mains as something that you are able to realize immediately whether or not it was done correctly and these were installed correctly and will operate as intended. He apologized for the situation and thanked the Commission listening.

Greg Wirth, Stahly Engineering, representing the applicant; gave an overview of the process used to install the taps, noting they are installed the same way in many other municipalities; as most do not have

such stringent regulations. He assured the Commission they were installed by a professional and competent contractor and have been tested for quality assurance; no problems were found. Mr. Wirth expressed regret over installing the taps in a manner that violated City Code and expressed regret.

Discussion

Commissioner Ellison asked Mr. Wirth if he was aware the certified plumber was going to perform the taps before or after they were done. Mr. Wirth stated he personally was not aware until after they had already been done. His understanding was the method would be acceptable; however, there was another staff member providing daily monitoring of the project. He became aware of their installation via contact from the City about the violation. Commissioner Ellison asked what the procedure would've been if he would've become aware of the code violation before the work was being performed. Mr. Wirth stated their job is construction oversight so obviously if they would've been aware of something not in accordance with City Code they would first contact the property owner and stop work on the job immediately in order for corrective actions to occur.

Commissioner Haladay asked for the tapping fee amount. Engineer Leland stated on November 2nd, which was the day the City was able to inspect 4 taps, the applicant came in and paid the fee of \$3490.

Commissioner Haladay asked for the timeframe between a contractor requesting a tap and it being performed. Engineer Leland stated no specific timeframe is established for taps; they are always completed in less than a week, generally the request is completed within two days. He noted he has never received a complaint regarding turnaround time during his employment with the City.

Mayor Smith asked if this violation of city code could be considered a misdemeanor and the applicant charged a fine. Attorney Jodoin indicated technically yes, however he is not aware of the City Commission's authority to charge a fine and would need to thoroughly research the idea. Mayor Smith asked if the violation could be transferred to City Court for review and determination of the fine amount. Attorney Jodoin explained his office would still be responsible for deciding whether or not to prosecute the violation and refer the case to Municipal Court for an initial hearing to be scheduled. He commented given the thorough examination of the code violation and the applicant's testimony admitting guilt in violating City Code, he would not feel comfortable pursuing criminal charges. Mayor Smith noted he is struggling with this variance as he does not want the applicant to have to excavate 6 or 7 blocks, nor does he want another contractor to perform the same violation.

Commissioner Haladay asked if it would be possible to condition the variance, guarantee or monetarily, some form of indemnification, should there be an issue down the line with the integrity of the main. Attorney Jodoin indicated that would be a reasonable option; his office could draft an agreement to be signed by the appropriate party (project manager, engineer, or property manager- to be determined) agreeing to cover the City should something go wrong with these taps. He added another issue is what kind of materials were used, echoing Engineer Leland's concerns over staff being totally unaware of what kind of materials were used. Commissioner Haladay asked if the variance should be tabled to provide time for the agreement to be written and

brought back before the Commission for approval or if the variance could be approved contingent upon the applicant entering into the agreement. Attorney Jodoin noted it is the Commission's decision whether or not to table this issue until an agreement could be drafted, but he anticipates it would be pretty standard stating the responsible party would indemnify the city from whatever issues may arise in the future from the installation. Commissioner Haladay asked if there are institutional controls in his office that would've identified that no one ever tapped the subject mains. Engineer Leland answered affirmatively and gave an overview of how staff would've determined something was wrong.

Commissioner Noonan asked for clarification of the contractor and plumbers experience working in the City of Helena. Engineer Leland explained the general contractor has a very extensive history and the plumber has done quite a bit of work in the community as well.

Motion

Commissioner Ellison moved approval for the request for variance from Helena City Code 6-2-3 and 6-2-4, for water service connections in Phase 1 of the Green Meadow Subdivision with the inclusion of a condition that the contractor indemnify the City of Helena in accordance with the provisions stated by City Attorney Jodoin. Commissioner Haladay seconded the motion.

Commissioner Ellison thanked Commissioner Haladay for his suggestion to apply the subject condition, as he did not feel comfortable with what would result from denying it or approving it as it was initially presented to the Commission. He cautioned he certainly does not want to see another problem like this come before the Commission.

Commissioner Haladay noted he felt indemnification was a good idea in this case since the tapping fees were not large enough to be indicative of malicious intent, a wait time of less than a week for installation and given that they would've been caught anyway, he felt indemnification was a viable option.

Vote

All voted aye, motion carried.

- C. CONSIDER AN AMENDMENT TO THE GREEN MEADOW AGREEMENT FOR SATISFACTION OF ANNEXATION CONDITIONS CHANGING "FINAL" ACCEPTANCE TO "INTERIM" ACCEPTANCE IN ITEM 3.A, TIMING OF PHASE I INFRASTRUCTURE INSTALLATION.

Staff Report

On October 17, 2017, the Helena City Commission approved Resolution No. 20311 annexing Lot 4A of COS #3035465 and authorized the City Manager to enter into an Agreement for Satisfaction of Annexation Conditions defining the responsibility for installation of the deferred improvements. *Item 3.a. "Timing of Phase I Infrastructure Installation"*, of that agreement requires installation and final acceptance of infrastructure improvements prior to issuing an above ground building permit. The owner of the property, Green Meadow Helena, LLC, is requesting, through their representative, to amend the requirement from "~~final~~" acceptance of infrastructure improvements to "interim" acceptance. The timing of the issuance of the building permits was intended to coincide with the timing of the infrastructure installation and completion of the final plat. This change would mirror current city requirements and standard practices for the issuance of an above-

ground building permit. This change does not affect the requirement that all infrastructure will have to be completed prior to final occupancy.

The proposed change would allow the developer to proceed with an above-ground building permit after installation of required infrastructure but would not delay development due to minor adjustment to that infrastructure.

Planner Gengler recommended approval of the proposed amendment as this change would allow the development to proceed with an above-ground building permit once the infrastructure had been installed and has received interim acceptance.

Discussion

Commissioner Ellison asked for an example of interim acceptance being granted to another project. Engineer Leland provided a detailed explanation of the three tiered permitting used by the City and pointed to Mountain View Meadows as an example of a development that has been allowed "interim" acceptance for their infrastructure installation.

Public comment

Mayor Smith called for public comment.

Marc Parriman, applicant; urged the Commission to approve the amendment to the Annexation Agreement and explained how it would aid the progress of the development prior to the arrival of winter weather.

Motion

Commissioner Ellison moved approval of a to amend the Agreement for Satisfaction of Annexation Conditions between Green Meadow Helena, LLC and the City of Helena changing "final acceptance" to "interim acceptance" in Item 3.a., "Timing of Phase I Infrastructure Installation". Commissioner Haladay seconded the motion. All voted aye, motion carried.

D. CONSIDER A RESOLUTION OF INTENTION TO ANNEX CONTIGUOUS GOVERNMENT PROPERTY, BEING PORTIONS OF GRANITE AVENUE, CANNON STREET, AND HIAWATHA STREET INTO THE CITY OF HELENA, MONTANA AND SET A PUBLIC HEARING DATE.

Staff Report

Senior Planner Dustin Ramoie reported the City of Helena has requested that Lewis and Clark County consider requesting annexation of portions of Granite Avenue, Cannon Street, and Hiawatha Street. These rights-of-way are proposed to have water and wastewater infrastructure installed in them in the near future and as such the City wishes to annex them into the City of Helena as well as to better facilitate emergency services, provide contiguous roads and access to properties in the City of Helena, and provide a route of annexation for the property at 2215 Cannon Street. On July 12, 2016 the Lewis and Clark County Commission approved Resolution #2016-55, which approved the annexation of these rights of way.

Prior to annexation of contiguous government property, the City Commission must hold a public hearing. The public hearing date being proposed is December 19th, 2016.

Planner Ramoie recommended approval of the resolution of intention as annexation of the subject rights-of-way will put them under City control prior to the City extending planned and designed water and/or wastewater infrastructure in said rights-of-way.

Annexation of the subject rights-of-way will help facilitate the City's planned infrastructure extension projects which will allow more property owners to abandon their individual well and septic systems and connect to City water and wastewater utilities if they so choose.

Planner Ramoie noted annexation of the subject rights-of-way will create pockets of wholly surrounded areas on the Westside and will bring some sections of right-of-way into the City that are not built to City standards.

Public comment

Mayor Smith called for public comment.

Lewis & Clark County Commissioner Susan Good-Geise referred to concerns expressed by the Lewis & Clark County Board of County Commissioners (BoCC) regarding the annexation of the subject property via written correspondence to the City Commission from CAO Eric Bryson earlier in the day. Commissioner Good-Geise provided a brief summary of the comments contained in the letter and respectfully requested the Commission act favorably on their request.

Steve Merrill, 2215 Cannon; urged the Commission to move forward with annexation of the identified area in order to deal with septic tank failures in the area.

Katherine Reese, Westside resident; requested the Commission remove a portion of the area included in the proposal as to not impose future annexation on the property owners based on the allowances for wholly surrounded properties.

Jodelle Fawn, Hiawatha Street; requested the Commission remove Granite Street from the resolution of intention as to not create a wholly surrounded area.

Discussion

Commissioner Ellison asked if the property could be removed from the area identified in the resolution of intention at the time of final annexation. Manager Alles stated yes. He referred to the request being posed by the BoCC and announced this topic would be on the December City/County Joint Work Session agenda for discussion.

Commissioner Haladay asked for a count of the residences included in the subject area currently receiving City services. Planner Ramoie indicated he could not provide a specific number during tonight's hearing; however he had calculated the amount for prior hearings on the project and he would report specific numbers to the Commission prior to the hearing for final annexation.

Commissioner Ellison indicated he would support the resolution of intention as is because the recommendation of the County Commission could still be met by amending the resolution on December 18th.

Commissioner Noonan spoke to the City's lengthy history of providing city services to the residents of the Westside. He explained services have always been extended in order to help residents when they needed it and the existing annexation project has taken years to come forward; the City has a responsibility to be able to protect its residents and it's gotten to the point where those responsibilities cannot be met without formal annexation.

Motion

Commissioner Noonan moved approval of a resolution of intention to annex contiguous government property, being portions of Granite Avenue, Cannon Street, and Hiawatha Street into the City of Helena, Montana, as shown on attached exhibits A and B, and set

a public hearing for December 19, 2016. Commissioner Ferris-Olsen seconded the motion. All voted aye, motion carried. **Res #20317**

- E. CONSIDER A RESOLUTION ANNEXING LOTS 1 AND 2 IN BLOCK 2 IN THE HIGHLAND PARK SUBDIVISION AND THE ADJACENT STUART STREET AND GLEN AVENUE RIGHTS-OF-WAY, GENERALLY LOCATED SOUTH OF STUART STREET AND WEST OF GRANITE AVENUE, IN LEWIS AND CLARK COUNTY, MONTANA INTO THE CITY OF HELENA, MONTANA.

Staff Report

The applicants have completed the conditions required for annexation and are now requesting the annexation of the subject property. The applicants would like to annex the properties to attain all City services and to utilize the property with an R-2 (Residential) zoning designation. At the September 14, 2015 City Commission meeting, the Resolution of Intention to Annex the subject property, Resolution #20213, passed unanimously (5-0) and provided the conditions for annexation.

The subject property was pre-zoned to the R-2 (Residential) District by adoption of Ordinance #3215 on January 25, 2016.

Planner Ramoie recommended approval of the annexation of the subject properties will allow for the abandonment of the existing individual septic systems, one of which was in the early stages of failure, and for the use of all city infrastructure in the area such as water, wastewater, and transportation.

Annexation of the subject properties will allow for the use of more efficient City utility services.

Public comment

Mayor Smith asked for public comment; none was received.

Motion

Commissioner Farris-Olsen moved approval of a resolution annexing Lots 1 and 2 in Block 2 in the Highland Park Subdivision and the adjacent Stuart Street and Glen Avenue rights-of-way, in Lewis and Clark County, Montana into the City of Helena, Montana. Commissioner Haladay seconded the motion. All voted aye, motion carried. **Res #20318**

- F. CONSIDER A RESOLUTION RELATING TO \$1,161,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$500,000 SUBORDINATE LIEN TAXABLE SERIES 2016A BOND AND \$661,000 SERIES 2016B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF.

Staff Report

Administrative Services Director Glenn Jorgenson reported The City is requesting the Commission approve borrowing \$1,161,000, \$500,000 of which will be forgiven, to finance three projects at the Ten Mile Treatment Plant. The three projects are a new chlorine system, a clearwell liner and cover, and engineering for programmable logic controllers. All three projects are complete and the financing was approved in prior year budgets.

Staff is recommending the City borrow up to \$661,000 from the DNRC Drinking Water Loan Program for 20 years at 2.5%. Also, borrow

\$500,000 from the same program that will be forgiven by DNRC once final inspections are completed. The \$500,000 comes from grant program funds supplied by the Environmental Protection Agency to DNRC.

Director Jorgenson noted the City will obtain a federal grant of \$500,000 to fund a portion of three important improvement projects at the Tenmile Treatment Plant.

Discussion

Commissioner Halalday asked the time period for turnaround of the funding. Director Jorgenson outlined the steps to be taken noting the process moves fairly quickly.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Farris-Olsen moved approval of a resolution relating to \$1,161,000 water system revenue bonds (DNRC Drinking Water State Revolving Loan Program), consisting of \$500,000 subordinate lien taxable series 2016A bond and \$661,000 series 2016B bond; authorizing the issuance and fixing the terms and conditions thereof. Commissioner Noonan seconded the motion. All voted aye, motion carried. **Res #20319**

G. CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR THE BILL ROBERTS MUNICIPAL GOLF COURSE- 2017 SEASON, AND SET A PUBLIC HEARING DATE.

Staff Report

Parks & Recreation Director Amy Teegarden reported on an annual basis city staff and the Golf Advisory Board (GAB) review the season's expenses, revenues, and trends in comparison to budget projections and make recommendations for potential fee changes.

Based on review of 2016 revenue reports, golf rounds and the 2016 financial feasibility study, there is a recommendation to increase and reclassify various fee rates and categories for the 2017 season. The specific changes and justification were outlined in the packet in the document "2017 Golf Fee Analysis Memo". Director Teegarden spoke to specific revisions proposed to the 2017 fees.

Director Teegarden recommended approval of the resolution of intention as an increase of certain fees will help ensure that revenue is keeping pace with the rising cost of expenses.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Haladay moved approval of a resolution of intention to establish fees to be charged for the Bill Roberts Municipal Golf Course and set a public hearing date for November 28, 2016. Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #20320**

**Public
Communications**

PUBLIC COMMUNICATIONS

No public communications were given.

**Meetings of
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is November 23, 2016 and the next Commission Meeting is November 28, 2016.

Commissioner Farris-Olsen announced the monthly ADA Compliance Committee would meet Tuesday, November 15th at 1:30pm in Room 426.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:39 p.m.

/S/ James E. Smith
Mayor

ATTEST:

/S/ Debbie Havens
Clerk of the Commission